

THE HONORABLE MARSHA J. PECHMAN

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

CRISTINA BALAN,

Plaintiff,

v.

TESLA MOTORS INC.,

Defendant.

Case No. 2:19-cv-00067-MJP

**JOINT STATUS REPORT AND
DISCOVERY PLAN**

Pursuant to Rule 26(f) of the Federal Rules of Civil Procedures and the Court's Order Regarding Initial Disclosures, Joint Status Report, and Early Settlement (Dkt. No. 4), the parties submit this Joint Status Report and Discovery Plan. The parties' attorneys held a telephonic conference on March 15, 2019 and have subsequently engaged in email correspondence. In that correspondence, counsel for Defendant Tesla, Inc. (formerly Tesla Motors, Inc., "Tesla" or "Defendant") requested that Plaintiff agree to extend the deadlines for exchanging Initial Disclosures and submitting this Joint Status Report, and requested that Plaintiff agree to arbitrate her claim pursuant to an existing arbitration agreement between the parties; Plaintiff refused either to extend any deadlines or to submit her claim to arbitration; and counsel for Tesla informed Plaintiff that Tesla would be filing a motion to compel arbitration. In the meantime, the parties agreed to submit this Joint Status Report.

The draft Joint Status Report provided by counsel for Defendant to Plaintiff inadvertently included an incomplete list of topics and the error was not noticed until the afternoon of April 11, 2019.

JOINT STATUS REPORT AND DISCOVERY PLAN
(Case: 2:19-cv-00067-MJP) - 1

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1 2019. The parties will prepare a supplemental Joint Status Report and provide it to the Court
2 promptly.

3 **1. Statement of the Nature and Complexity of the Case.**

4 Plaintiff's Position: This is a malicious and vindictive defamation-libel matter. Ms Balan
5 alleges that defendant Tesla, three and half years after terminated her employment, in retaliation
6 for her efforts to prevent Tesla safety, quality and inhumane practices on treating anyone who
7 dare to speak up, Tesla attacked Ms Balan publicly, made defamatory statements to a Huffington
8 Post article in connection with her current litigation with Tesla at the time, during arbitration
9 related to her employment and her termination.

10 Tesla asked the reporter, who wrote a true article about her story based-on facts, to update
11 his article with a note from Tesla PR Spokesperson. The note was almost as long as the article
12 itself, full of outrageous lies to which Tesla were clearly aware at the time they've made the
13 statement. The Plaintiff ex-teammates, VPs, CEOs and of suppliers she worked with, they were
14 outraged to read how deceitful and malicious Tesla can be, when they decide to can attack and
15 destroy someone life and entire career. Lots of them they will all testify at this case.

16 Tesla even went to the extent of publishing internal legal conclusions or investigations,
17 to influence the arbitrator not just the public, on issues they were stopped to mention during
18 litigation, because of attorney client privilege they've raised when asked to present the
19 conclusions of those investigations during the legal venue and they refused.

20 The Plaintiff immediately tried to stop the damage that was done by the defendant thru
21 different venues without any success, first by asking Tesla to remove the note. Tesla refused.
22 She even wrote a blog, in which she presented facts on most of the lies the defendant posted, her
23 lawyer tried to discuss this matter with the arbitrator, which didn't care as was not part of the
24 employment issues or the arbitration. Ms Balan attorney advise her and instruct her to wait until
25 the finality of the current arbitration, because this defamation claim is not part of the arbitration
26 agreement and has to be filed in court. Which she did. She waited until the award was issued.
27

1 Prior to filing this lawsuit, Plaintiff sent a letter of intent and multiple requests to correct
2 the false and misleading statements, especially after we've had an arbitration award showing that
3 many of Tesla statements in the article are in fact not true. Tesla even engaged in a settlement
4 discussion in October 2018, but Defendants refused again to correct the false statements.

5 Now the defendants are claiming to go back to arbitrate facts that were already presented
6 and concluded by an arbitrator award. Plaintiff will present her point of view in the response to
7 the defendant Motion to Compel Arbitration on why this arbitration agreement is not enforceable
8 in this particular case.

9 Plaintiff brings this action for defamation with malice and Intentional infliction of
10 emotional distress, all with clear evidence that both the Defendant and Plaintiff already have.

11 Discovery will be extremely simple as the Plaintiff has more than 90% of the discovery
12 she needs. The trial is expected to not be complex, except that the Plaintiff has a lot of potential
13 witnesses, depending on the claims that go to trial.

14 Defendant's Position: Plaintiff's claim arises from her employment with Tesla and is
15 subject to an existing arbitration agreement between the parties. Tesla asserted Mandatory
16 Arbitration as its first affirmative defense in its Answer in this matter. Subsequently, counsel for
17 Tesla reminded Plaintiff of her agreement to arbitrate and the fact that she has previously
18 arbitrated claims against Tesla pursuant to the parties' agreement, provided a copy of the
19 arbitration agreement, and requested that Plaintiff agree to arbitrate her claims. Plaintiff refused.
20 Tesla will be filing a motion to compel arbitration as soon as possible, and has notified Plaintiff
21 of its intention to do so. In submitting this Joint Status Report with Plaintiff, Tesla in no way
22 intends to engage in litigation in this Court, does not waive its right to promptly bring a motion
23 to compel arbitration, and expressly reserves its right to do so.

24 **2. Proposed Deadline for Joining Additional Parties.**

25 Plaintiff's Position: Depending on the depositions and discovery between Tesla and
26 Huffington Post and its reporter, the Plaintiff may add the Huffington Post as a defendant.

1 Defendant's Position: Defendant does not anticipate joining any additional parties. As
 2 discussed under paragraph number 1, above, Plaintiff's claim is subject to an arbitration
 3 agreement between the parties, and Defendant will be filing a motion to compel arbitration.

4 **3. Magistrate.**

5 Plaintiff's Position: The Plaintiff do not consent to trial by a Magistrate Judge.

6 Defendant's Position: Defendant does not consent to a Magistrate Judge. As discussed
 7 under paragraph number 1, above, Plaintiff's claim is subject to an arbitration agreement between
 8 the parties, and Defendant will be filing a motion to compel arbitration.

9 **4. Related Cases.**

10 Plaintiff's Position:

11 Plaintiff had previously arbitrated claims against Defendant for employment related
 12 issues. The Plaintiff won one of the claims and Defendant paid attorney fees and costs.

13 During the litigation, after all the discovery, experts and depositions phase ended, when
 14 the parties were getting ready for the hearing, the plaintiff was defamed by the defendant in a
 15 horrible and outrageous way. At a time where the Defendant was aware of the facts and where
 16 the truth stands, but still decided to destroy Ms. Balan publicly.

17 As mention in Paragraph 1, after the final award was issued, the Plaintiff won one of the
 18 employments claims and she asked against the Defendant to apologize and correct the defamatory
 19 statements, especially that even the award shows that Tesla spread false information about the
 20 Plaintiff. The defendant ignored the request.

21 Defendant's Position: Plaintiff and Defendant have previously arbitrated claims made by
 22 Plaintiff against Defendant. This case is related to that arbitration. As discussed under paragraph
 23 number 1, above, Plaintiff's claim is subject to an arbitration agreement between the parties, and
 24 Defendant will be filing a motion to compel arbitration.

25 **5. Initial Disclosures.**

26 Plaintiff's Position: Despite the Plaintiff requests, Defendant did not want to have a meet
 27 and confer conference and didn't discuss anything related to the case or initial disclosure up to

1 this point. On the initial disclosure exchange the Plaintiff only received from the Defendant
2 statements like “as yet unidentified” on the witnesses names and documents.

3 In the light of the current situation the Plaintiff will present her point of view regarding
4 the discovery, disclosures and trial dates.

5 Defendant’s Position: As discussed under paragraph number 1, above, Plaintiff’s claim
6 is subject to an arbitration agreement between the parties, and Defendant will be filing a motion
7 to compel arbitration. Defendant timely served initial disclosures on Plaintiff and reserved its
8 right to supplement its disclosures in the future. Discovery should be completed, and any issues
9 related to discovery should be addressed, in arbitration.

10 **6. Expert and Pretrial Disclosures.**

11 Plaintiff’s Position: The Plaintiff doesn’t need more then June 1, 2019 for Expert phase
12 Tesla has yet to identify the person who wrote the article and the ones who agreed and
13 instructed the PR to write the malicious statements.

14 Defendant’s Position: As discussed under paragraph number 1, above, Plaintiff’s claim
15 is subject to an arbitration agreement between the parties, and Defendant will be filing a motion
16 to compel arbitration. Discovery should be completed, and any issues related to discovery should
17 be addressed, in arbitration.

18 **7. Subjects, Timing, and Potential Phasing of Discovery.**

19 Plaintiff’s Position: Until The Defendant will not identify the number of people who
20 were involve in writing the defamatory note and make it public this paragraph is unknown at this
21 time

22 Defendant’s Position: As discussed under paragraph number 1, above, Plaintiff’s claim
23 is subject to an arbitration agreement between the parties, and Defendant will be filing a motion
24 to compel arbitration. Discovery should be completed, and any issues related to discovery should
25 be addressed, in arbitration.

26 **8. Preservation of Discoverable Information.**

27 Plaintiff’s Position: Plaintiff will comply with the rules of preservation of discovery.

1 Defendant's Position: As discussed under paragraph number 1, above, Plaintiff's claim
 2 is subject to an arbitration agreement between the parties, and Defendant will be filing a Motion
 3 to Compel Arbitration. Discovery should be completed, and any issues related to discovery
 4 should be addressed, in arbitration. Defendant will comply with the rules of discovery with
 5 regard to preservation of discoverable information.

6 **9. Electronically Stored Information.**

7 Plaintiff's Position: Within 30 days after the Rule 26(f) conference.

8 In the lack of collaboration from the Defendant for the discovery, The Plaintiff requests
 9 all the document to be exchange in pdf and original form (like outlook raw state and PST format).
 10 Electronic data productions may be send electronically via FTP and physically using electronic
 11 storage media such as flash memory devices.

12 Taking into account the history that Tesla had in the past to hide and destroy evidence,
 13 the Plaintiff may require an onsite third party forensic IT expert.

14 Defendant's Position: As discussed under paragraph number 1, above, Plaintiff's claim
 15 is subject to an arbitration agreement between the parties, and Defendant will be filing a Motion
 16 to Compel Arbitration. Discovery should be completed, and any issues related to discovery
 17 should be addressed, in arbitration.

18 **10. Privilege Issues.**

19 Plaintiff's Position: Plaintiff believes they will be some issues from the Defendant part
 20 regarding the emails between the PR and other departments like legal.

21 Defendant's Position: As discussed under paragraph number 1, above, Defendant will be
 22 filing a motion to compel arbitration. Discovery should be completed, and any issues related to
 23 discovery should be addressed, in arbitration.

24 **11. Inadvertent Disclosure of Privileged Information.**

25 Plaintiff's Position: Inadvertent production of material subject to the attorney-client
 26 privilege, work product immunity, or other applicable privilege or immunity shall not constitute
 27 a waiver of any privilege or immunity.

1 The Plaintiff request a Privilege Log Based on Metadata. That privilege logs shall include
 2 a unique identification number for each document and the basis for the claim (attorney-client
 3 privileged or work-product protection), so we can identify how many back and forth and thru
 4 what channels PR got their information and approvals, to write something so outrageous,
 5 knowing they are false information.

6 Defendant's Position: As discussed under paragraph number 1, above, Plaintiff's claim
 7 is subject to an arbitration agreement between the parties, and Defendant will be filing a motion
 8 to compel arbitration. Discovery should be completed, and any issues related to discovery should
 9 be addressed, in arbitration.

10 **12. Changes to Limitations on Discovery.**

11 Plaintiff's Position: Plaintiff does not see any changes to limitations on discovery

12 Defendant's Position: As discussed under paragraph number 1, above, Plaintiff's claim
 13 is subject to an arbitration agreement between the parties, and Defendant will be filing a motion
 14 to compel arbitration. Discovery should be completed, and any issues related to discovery should
 15 be addressed, in arbitration.

16 **13. Date Discovery Can Be Completed.**

17 Plaintiff's Position: The discovery on the case should be ready by June 1, 2019.

18 The Plaintiff already has in her possession all the material facts she needs to proof her
 19 claims,

20 The only things she needs are the internal emails, documents, voicemails and calls
 21 between the PR Person and the VP of PR/global communication Dave Arnold had with the media
 22 regarding the Plaintiff as she knows they've existed and all the other person inside tesla like legal
 23 and marketing department that ever discussed or mentioned the Plaintiff with any media.

24 Defendant's Position: As discussed under paragraph number 1, above, Plaintiff's claim
 25 is subject to an arbitration agreement between the parties, and Defendant will be filing a motion
 26 to compel arbitration. Discovery should be completed, and any issues related to discovery should
 27 be addressed, in arbitration.

14. Suggestions for Prompt and Efficient Resolution.

Plaintiff's Position: It may help the court and the resolution of this case if the Defendant will start to collaborate with the Plaintiff and respect the deadlines and rules set by the court.

Plaintiff is preparing to file a motion for summary judgment taking into account that most of the material facts are already discovered.

Defendant's Position: As discussed under paragraph number 1, above, Plaintiff's claim is subject to an arbitration agreement between the parties, and Defendant will be filing a motion to compel arbitration.

15. Alternative Dispute Resolution.

Plaintiff's Position: The Plaintiff do not believe that ADR will benefit this case taking into account the bad faith Tesla showed for the past 5 years.

Nevertheless, the Defendant can take into consideration the settlements discussions from October 2018, which first of all included a retraction and an apology to what was said in the article.

Defendant's Position: As discussed under paragraph number 1, above, Plaintiff's claim is subject to an arbitration agreement between the parties, and Defendant will be filing a motion to compel arbitration.

16. The Month the Case Will Be Ready for Trial.

Plaintiff's Position: With the evidence that are already at hand the Plaintiff believes the case can be ready for trial in less than 4 months. Plaintiff propose the August 1st, 2019 time frame.

Defendant's Position: As discussed under paragraph number 1, above, Plaintiff's claim is subject to an arbitration agreement between the parties, and Defendant will be filing a motion to compel arbitration.

17. Jury or Non-Jury Trial.

Plaintiff's Position: The Plaintiff hopes to have the fair chance of a Jury Trial.

Defendant's Position: As discussed under paragraph number 1, above, Plaintiff's claim

1 is subject to an arbitration agreement between the parties, and Defendant will be filing a motion
2 to compel arbitration.

3 **18. Number of Trial Days Required.**

4 Plaintiff's Position: Because the evidence and material facts are so clear, the trial should
5 be 3 to 5 days, depends how many claims will go to trial.

6 Defendant's Position: As discussed under paragraph number 1, above, Plaintiff's claim
7 is subject to an arbitration agreement between the parties, and Defendant will be filing a motion
8 to compel arbitration.

9 **19. Corporate Disclosure Statement.**

10 Defendant filed its Rule 7.1 Corporate Disclosure Statement on February 14, 2019 (Dkt.
11 No. 6).

12
13 DATED: April 11, 2019

14 LANE POWELL PC

15
16 By s/ Cristina Balan

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18 Pro Se Plaintiff

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CERTIFICATE OF SERVICE

I hereby certify that on April 11, 2019, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System, which in turn automatically generated a Notice of Electronic Filing (NEF) to all parties in the case who are registered users of the CM/ECF system. The NEF for the foregoing specifically identifies recipients of electronic notice. I hereby certify that the following document was sent to the following CM/ECF participant:

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Pro Se Plaintiff

Executed on the 11th day of April, 2019, at Portland, Oregon.

s/ Darin M. Sands

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